

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

JENNIFER LEECH, *et al.*, :
Plaintiffs, : CASE NO. 1:10-CV-2645
v. :
OPINION & ORDER
JOHN MAYER, *et al.*, : [Resolving Doc. No. [121](#)]
Defendants. :
:

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Plaintiffs seek to depose Defendant Judge James DeWeese, one of the twenty-three defendants remaining in this case.

The Court earlier granted DeWeese's motion to dismiss—based primarily on absolute judicial immunity—on all but one claim. [Leech, et al v. Mayer, et al, No. 1:10-CV-2645, 2011 WL 1540386 \(N.D. Ohio Apr. 21, 2011\)](#). Judge DeWeese took an interlocutory appeal to the Sixth Circuit, where the case will likely sit for the next fifteen months. Federal Court Management Statistics 2010, Courts of Appeals, available at <http://www.uscourts.gov/viewer.aspx?doc=/cgi-bin/cmsa2010Sep.pl> (Sixth Circuit in drop-down menu then continue to Show Page Two).

Now, “[b]ecause the immunity issue remains unresolved,” Judge DeWeese asks the Court for an order quashing the Plaintiffs’ subpoena to take his deposition and produce documents. [[Doc. 121-1 at 2.](#)] DeWeese says his appeal voids the Plaintiffs’ Federal Rule 45 subpoena, which “issues

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in aid of a trial proceeding.” See In re Apollo Group, Inc. Sec. Litig., 329 Fed. App’x. 283, 284 (D.C. Cir. 2009). This argument, however, does not account for the case pending before the Court as to the other twenty-two defendants. Even if the Court had dismissed the entire case against Judge DeWeese, the Plaintiffs could still seek to depose him on factual matters relating to the remaining defendants’ conduct. Judges are not immune from all discovery.

The Court therefore **GRANTS IN PART** and **DENIES IN PART** Defendant Judge DeWeese’s motion to quash. While DeWeese’s appeal is before the Sixth Circuit, the Court will stay discovery relating to DeWeese’s alleged order removing Leech from her home. All other discovery, including DeWeese’s deposition on the conduct of other defendants, will proceed.

IT IS SO ORDERED.

Dated: May 6, 2011

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE